

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JO ANN HOWARD &)
ASSOCIATES, P.C., *et al.*,)
Plaintiffs,)
vs.) Case No. 4:09CV01252 ERW
J. DOUGLAS CASSITY, *et al.*,)
Defendants.)

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant Herbert Morisse's ("Morisse") Motion to Dismiss Count 42 of Plaintiffs' Third Amended Complaint ("TAC") [ECF No. 1143]. In his Motion to Dismiss, Morisse states that Count 42 of Plaintiffs' TAC purports to bring claims against him for "aiding and abetting" various breaches of duty committed by other defendants in this action. Morisse further states that similar "aiding and abetting" claims asserted against Missouri Trustee Defendants and Defendant Richard Markow were dismissed by the Court in a September 11, 2012 Order, for failure to state a claim upon which relief may be granted [ECF No. 1123]. In its September 11 Order, the Court found that, even if Missouri state law were to recognize the "aiding and abetting" theories of secondary liability for the acts of a primary tortfeasor as described in Section 876(b) or (c) of Restatement (Second) of Torts, the TAC failed to plead sufficient facts to support the requisite elements of any cause of action under the section [ECF No. 1123].

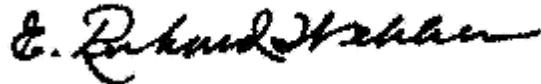
In their Response opposing Morisse's Motion to Dismiss [ECF No. 1144], Plaintiffs adopt and incorporate the arguments they made in response to the motions filed by Missouri Trustee Defendants and Defendant Richard Markow. Nevertheless, Plaintiffs acknowledge that

the reasoning in the Court's September 11, 2012 Order dismissing the "aiding and abetting" claims against the Missouri Trustee Defendants and Defendant Markow also would entitle Morisse to dismissal of Count 42. The Court will grant Morisse's Motion to Dismiss Count 42 of Plaintiffs' Third Amended Complaint, for the reasons discussed in its September 11, 2012 Memorandum and Order [ECF No. 1123], which is adopted and incorporated herein.

Accordingly,

IT IS HEREBY ORDERED that Defendant Herbert Morisse's Motion to Dismiss Count 42 of Plaintiff's Third Amended Complaint [ECF No. 1143] is **GRANTED**. Count 42 of Plaintiffs' Third Amended Complaint is **DISMISSED**.

Dated this 8th day of January, 2013.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE